IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO. 824 OF 2005

IN

FIRST APPEAL NO. 445 OF 1993

Smt. Manisha Narendra Nalawade ..Appellant

versus

The Municipal Corporation for

Greater Bombay ..Respondents

Mr. C. S. Bhandari for the Appellant.

Mr. K. K. Tated i/b. M/s. Mulla & Mulla & Craigie Blunt & Careo for the Respondents.

CORAM : D. G. DESHPANDE,J.

DATE : 7TH MARCH ,2005

ORAL ORDER :

1. This Civil Application is taken out for setting aside the dismissal order dated 11.1.2005 and for restoration of the First Appeal. Heard learned counsel for the parties. Looking to the nature of the matter, the dismissal order dated 11.1.2005 is set aside and First Appeal is restored to file. Civil Application disposed of accordingly.

2. So far as First Appeal is concerned, it is

filed by the original claimant i.e. the appellant herself who suffered an accident while she was travelling in a bus of the respondents - BMC. She had claimed Rs.1,50,000/- as compensation for the injury suffered on her ankle. However, the Tribunal, firstly, came to the conclusion that there was absolutely no evidence indicating negligence of the driver or the conductor of the bus by which she was travelling and that she has changed her versions from time to time and she was not certain how she fell down from the bus. Her evidence is reproduced in paragraph 5 of the impugned judgment. It is as under:

> **".....In the meanwhile 2 to 3 passengers who had wrongly entered in this Bus like me started getting and the Bus which was still moving. But, those passengers actually do not get down as the Bus was moving. I then told the conductor to stop the Bus and to allow me to get down. But the conductor did not head my request. By this time, due to the push of somebody of the passengers. I fell down from the Bus. Accordingly to me, it is because of carelessness or negligence of the conductor of the Bus and the driver of the Bus, I have to suffer."**

Then in the cross examination she has stated as under:

> **".....When I tried to get down and got down from the Bus, the Bus had stopped and it was in slow motion. I did not fall out of the Bus due to the push of any passenger inside the Bus, but due to the jerk of the moving Bus."**

The Tribunal therefore found that the appellant is giving different versions and further there was no independent corroboration. The respondent had examined the conductor of the bus and according to him the applicant / appellant before the bus stopped went near the exist door and tried to get down facing in the opposite direction of the moving bus and as she got down when the bus was still moving, she fell down. The Tribunal therefore found that evidence of the conductor was consistent and the evidence of the applicant / appellant was contradictory and therefore Tribunal came to the conclusion that there was absolutely no evidence to indicate that either the driver or the conductor were negligent and therefore application was dismissed.

3. Since there is no evidence to prove

negligence of the bus driver or the conductor, the Tribunal was justified in dismissing the application. However, looking to the suffering, the Respondents can be directed to pay ex-gratia payment of Rs.10,000/= (Rupees Ten Thousand) and therefore I pass the following order:

ORDER

Appeal is dismissed. No order as to costs.

. Respondents to pay ex-gratia payment of Rs.10,000/- (Rupees Ten Thousand) to the appellant within four weeks from today. This should not be treated as a precedent.

7.03.2005 (D.G. DESHPANDE, J.)